Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No. 79-1889

IN THE SUPREME COURT OF THE UNITED STATES
October Term 1980

VICTORIO C. RIVERA,
Petitioner,

versus

OREGON STATE EMPLOYEES ASSOCIATION
Morton H. Shapiro, John Irvin, Peter DeLuca,

STATE OF OREGON
Robert Straub, Victor Atiyeh, James A. Redden, William Hoelsher, Harold Williams, Carol Whitney

STATE ACCIDENT INSURANCE FUND,
Charles Gill, Jr., Hank McCauley, Deryl Currie, Jim Randall, Jean Rover, Catherine Sanford, O. K. Nielsen

STATE PERSONNEL DIVISION,
William G. Hughes, Ranney H. Reinen, Betty Spelbrink

STATE EMPLOYMENT DIVISION,
Raymond P. Thorne, C. Woods, R. Ritchie, L. Propeck, Dean Barr, W. H. Brinegar, Colette Buhr, John Loike, Barbara Johnson

EMPLOYMENT RELATIONS BOARD,
Melvin Cleveland, A. H. Blogg, Peter C. Courtney

CIVIL RIGHTS OF BUREAU OF LABOR,
Bill Stevenson, Maria Baragli, Frances Runkel, Reina Smith,
Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PETITION FOR REHEARING

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

4926 Pullman Ave. SE
Salem, Oregon 97302
(503) 581-4649

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No. 79-1889

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VICTORIO C. RIVERA, petitioner,

v.

OREGON STATE EMPLOYEES ASSOCIATION

and the

STATE OF OREGON, ET AL

On Appeal from the United States District Court for the District of Oregon

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PETITION FOR REHEARING

Pursuant to Rule 51 of the Rules of the Supreme Court of the United States, petitioner, of racial minority, deprived of his constitutional rights to due process of law and equal protection of the law, herein respectfully moves this Court for an order

(1) vacating its denial to a "Direct Appeal" from decisions invalidating Acts of Congress, entered on October 6, 1980, and (2) granting the petition. As grounds for this motion, petitioner states the following:

I.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DISREGARD PROCEDURAL REUIREMENTS TO JURISDICTION ON DIRECT APPEALS.

"Any party may appeal to the Supreme Court from * * * decree or order of any court of the United States, * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party". Title 28 USCS 1252.

Also, "in any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, where-

in the constitutionality of any Act of Congress affecting the public interest is drawn in question, * * *."Title 28 USCS 2403.

1. Petitioner had submitted a timely "Notice of Appeal to the Supreme Court of the United States" dated April 29,1980, and filed with the U.S. District Court for the District of Oregon on April 30, 1980, pursuant to Rule 10 of the Supreme Court.
2. Petitioner had submitted a timely 40 copies of the Jurisdictional Statement, had paid the docket fee, and had filed with proof of services to all appellees as prescribed by Rule 28, and had complied in all respects with Rule 15 of the Supreme Court. Also, the Jurisdictional Statement satisfied all requirements as provided in Rule 12 and Rule 33 of the Supreme Court of the United States.

3. Appellees Oregon State Employees Association and the State of Oregon, et al, had failed to respond to petitioner's Jurisdictional Statement and had failed to file a motion to dismiss the appeal on the ground that the appeal was not within this Court's jurisdiction, or because it was not taken in conformity with Statute or with the Rules of the Supreme Court.

II.

TO DISMISS PETITIONER'S DIRECT APPEAL IS UNCONSTITUTIONAL.

"Sect. 1 * * * No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." XIV Amendment to the United States Constitution.

1. Petitioner called by long distance the clerk of the Supreme Court on Wednesday, October 8, 1980, at 9 AM, Pacific Time, to inquire the status of Civil No. 79-1889. The clerk told petitioner that on Monday, October 6, 1980, the Court had decided to dismiss the petitioner's direct appeal, as well as "alleged" writ of certiorari to the case. Furthermore, the clerk told petitioner and quote,

> "The Court did not want to hear anything about your case."

2. Petitioner received the official order from the clerk on October 10, 1980, dismissing the direct appeal for want of jurisdiction.

3. "Supreme Court, being without direct-appeal jurisdiction, will vacate District Court's order and remand case to District Court so that fresh order may be entered and timely appeal prosecuted to Court of Appeals." Gonzales v. Automatic Employees Credit Union (1974), 419 US 90, 42 L Ed 2d 249, 95 S Ct 289.

III.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DEPRIVE HIM OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF THE LAW.

"Where jurisdiction of district court was invoked upon constitutional grounds, Supreme Court, upon appeal from order denying pre-

liminary injunction, had jurisdiction to review whole case." Van Dyke v. Geary (1917) 244 US 39, 61 L Ed 973, 37 S Ct 483.

IV.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DEPRIVE HIM OF HIS CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS.

"Federal District Court's decision is reviewable by United States Supreme Court on appeal, 28 USCS Section 1252, where basis of District Court's decision is that Act of Congress is unconstitutional, regardless of what contentions of parties might be as to what proper basis of decision should have been." United States v. Raines (1960) 362 US 17, 4L Ed 2d 524, 80 S Ct. 519.

V.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DESTROY THE VERY FOUNDATION OF A DEMOCRATIC SOCIETY.

"Jurisdiction of Supreme Court on appeal extended to every question involved, whether state or federal." Sterling v. Constantin (1932) 287 US 378, 77 L Ed 375, 53 S Ct 190.

VI.

TO DISMISS PETITIONER'S DIRECT APPEAL IS A WILFUL CONSPIRACY WITH THE LOWER COURT TO DISCRIMINATE AGAINST AND INJURE THE PETITIONER.

"Although government's jurisdictional statement raised no question reviewable by Supreme Court on direct appeal from District Court's ruling dismissing indictment, nevertheless, where indictment is valid, appeal will not be dismissed, but ruling will be set aside and case remanded for trial." United States v. Fruehauf (1961) 365 US 146, 5 L Ed 2d 864, 81 S Ct 899.

VII.

TO DISMISS PETITIONER'S DIRECT APPEAL IS GIVING-IN TO THE WISHES OF CORRUPT OFFICIALS IN THE GOVERNMENT TO OBSTRUCT JUSTICE.

"Supreme Court of United States may reverse finding of fact in action tried without intervention of jury, where, although there is evidence to support finding, reviewing courts, on entire evidence, is left with definite and firm conviction that mistake has been committed." United States v. United States Gypsum Co. (1948) 333 US 364, 92 L Ed 746, 68 S Ct 525, reh den 333 US 869, 92 L Ed 1147, 68 S Ct 788.

VIII.

TO DISMISS PETITIONER'S DIRECT APPEAL IS INCOMPETENCY OF JUDGES WITHIN THE SUPREME COURT OF THE UNITED STATES.

"In case of direct appeal, reviewing court takes action appropriate in interest of justice, even though problem would not rise to constitutional dimensions neces-

sary to undo final judgment on collateral attack." Scott v. United States (1970) 138 App DC 339, 427 F2d 609.

IX.

TO DISMISS PETITIONER'S DIRECT APPEAL IS IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES OF JUDGES IN THE SUPREME COURT OF THE UNITED STATES.

"Purpose of 28 USCS Section 1252, allowing direct appeals to Supreme Court from certain decisions of District Court, is to provide prompt review of constitutionality of federal acts." Reid v. Covert (1956) 351 US 487, 100 L Ed 1352, 76 S Ct 880, different results reached on reh on other grounds 354 US 1, 1 L Ed 2d 1148, 77 S Ct 1222.

X.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO PREVENT PETITIONER FROM EXERCISING HIS CONSTITUTIONAL RIGHTS WITHIN THE LAW.

"As judges of this court, we find ourselves in much the same position as the judges in Evans v. Gore, supra. We regret that it falls our lot to decide these cases, and we would much prefer that a resolution of the controversy not be our responsibility. Nevertheless we realize that the plaintiffs are entitled to have their cases heard and decided by a court of the United States, and under the law there is no other court to which they could go. Should we refuse to hear and decide their cases, the doors of the courts would be closed to them. This could amount to a denial of due process under the 14th amendment to the Constitution. See Boddie v. Connecticut, 401 US 371, 91 S Ct. 780, 28 L Ed 2d 113 (1971). It is a fundamental principle of

our jurisprudence that access to the courts to secure and establish important rights should be made available to all citizens at all times. This is particularly true where the complaining parties are asserting claims under the Constitution, as in the instant cases." Atkins v. United States 556 F. 2d 1028 (1977)

C O N C L U S I O N

For the reasons set forth above and the fact that the above-mentioned case was never scheduled for trial nor was there a hearing before the lower court, as well as those contained in the petition to direct appeal, petitioner prays that this Court

grant rehearing of the order of dismissal, vacate that order, grant the petition and review the judgment and opinion below.

Dated this 14th day of October, 1980.

Respectfully submitted,

Victorio C. Rivera

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

AFFIDAVIT OF CERTIFICATION

I, VICTORIO C. RIVERA, petitioner in this action, hereby swear that the above-mentioned allegations are true to the best of my knowledge. Also, I hereby swear that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 51(1) of the Rules of the Supreme Court of the United States.

Victorio C. Rivera

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

Subscribed and sworn before me this 14th day of October, 1980.

[illegible]

NOTARY PUBLIC OF OREGON

My commission expire 8-24-81

AFFIDAVIT OF SERVICE

I, VICTORIO C. RIVERA, deprived of legal representation, is representing himself as petitioner herein, depose and say that on the ____ day of October, 1980, I served a total of 9 copies of the foregoing "Petition for Rehearing" on the several parties thereto, as follows:

1. On the United States, by mailing 3 copies in a duly 3 separate addressed envelopes, with air mail postages prepaid, to The Solicitor General, Department of Justice, Washington, D.C. 20530.
2. On Oregon State Employees Association and the State of Oregon, et al, intervening defendants, by mailing 3 copies for each defendant in duly marked three separate sealed envelopes, with first class postages prepaid, to their res-

pective attorneys of record, as follows:

a. WILLIAM R. CANESSA
Asst. Atty. General
500 Pacific Building
520 SE Yamhill St.
Portland, Oregon 97204

Attorney for the State of Oregon

b. DAVID W. AXELROD, OTHERS
Attorneys at law
1200 Standard Plaza
Portland, Oregon 97204

Attorneys for the Oregon State Employees Association

ALL PARTIES REQUIRED TO BE SERVED HAVE BEEN SERVED.

_____

VICTORIO C. RIVERA, petitioner
Deprived of legal representation, is representing himself.

4926 Pullman Ave. SE
Salem, Oregon 97302
(503) 581-4649

Subscribed and sworn before me this ___ day of October, 1980.

_____

NOTARY PUBLIC OF OREGON

My commission expire _____